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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/873,662	06/04/2001	Ramon L. Klemmensen	10968.00003	4258

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EXAMINER

BOTTORFF, CHRISTOPHER

ART UNIT	PAPER NUMBER
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3618

DATE MAILED: 04/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/873,662

Applicant(s)

KLEMMENSEN ET AL.

Examiner

Christopher Bottorff

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 June 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) 16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 9-15 is/are rejected.
- 7) ☒ Claim(s) 5-8 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 August 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

The preliminary amendment filed August 17, 2001 has been entered.

Information Disclosure Statement

The U.S. Patents provided with the information disclosure statement (IDS) submitted on August 17, 2001 have been considered by the examiner. However, in regard to German document 326815, the information disclosure statement fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information. The German document has been placed in the application file, but the information referred to therein has not been considered.

Drawings

The corrected or substitute drawings were received on August 17, 2001. These drawings are accepted.

Claim Objections

Claim 16 is objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim cannot refer to two claims in the conjunctive ("1 and 9"). See MPEP § 608.01(n). Accordingly, the claim has not been further treated on the merits.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 4, 14/1, and 15/1 are rejected under 35 U.S.C. 103(a) as being unpatentable over Franklin et al. US 5,575,362 in view of Tiramani et al. US 6,176,559.

Franklin et al. discloses a portable container having a generally parallelepiped container 22 including a bottom side, a front side, a back side, a first lateral side, a second lateral side, and an open top with a cover 116. See Figures 1-3 and 14. A telescoping handle 30 is mounted on the back side intermediate the first and second lateral sides, and the back side includes an integral vertical passage between guide rails 102 and 102', wherein the passage has an open top side. See Figures 4 and 6, and column 5, lines 6-23. The handle includes a plurality of telescoping members slidably mounted in the vertical passage, wherein a first member 60, 110, 110' comprises a cross bar 60 and a second member 100 comprises a tubular housing. See Figures 4-8. Two wheels, 96 and 96', are each mounted on an axle attached to the container back side and each support the container adjacent a respective side of the handle vertical passage. See Figure 1. Also, since the vertical dimension of the vertical passage does not extend through the full radius of the contoured lower portion of the

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back side, the vertical dimension of the vertical passage is less than the vertical dimension of the back side. See Figures 4 and 5.

Franklin et al. does not disclose that the container is a tool container in the form of a tub, that the container is formed by molding, or that the container includes nesting trays. However, Tiramani et al. teaches that providing a container as a molded plastic tool container in the form of a tub was old and well known in the art at the time the invention was made. See column 1, lines 8-10, column 8, lines 57-58, column 9, lines 11-12, and column 12, lines 42-44. Also, providing nesting trays 12 was also old and well known at the time the invention was made. See Figure 31.

From the teachings of Tiramani et al., forming the container of Franklin et al. as a molded plastic tool container in the form of a tub would have been obvious to one of ordinary skill in the art at the time the invention was made. This would allow a workman to easily store and transport his equipment. Also, this would utilize a manufacturing process (molding) that is familiar to manufacturing personnel and would produce a strong and lightweight structure. Providing the container of Franklin et al. with nesting trays would have been obvious to one of ordinary skill in the art at the time the invention was made so that items can be efficiently organized within the container.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Franklin et al. US 5,575,362 in view of Tiramani et al. US 6,176,559 as applied to claim 1, and further in view of Ezer US 6,202,254.

Franklin et al. does not disclose that the bottom end of the vertical passage is open. However, Ezer teaches that the practice of providing the bottom end of a vertical passage of a telescoping handle as an open structure 64 was old and well known at the time the invention was made. See column 4, lines 41-45. From the teachings of Ezer, providing the bottom end of the vertical passage of Franklin et al. with an open structure would have been obvious to one of ordinary skill in the art at the time the invention was made. This would reduce the amount of material required to form the portable container and it would help ensure full retraction of the handle.

Claims 9-13, 14/9, and 15/9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Franklin et al. US 5,575,362 in view of Tiramani et al. US 6,176,559 and Marchwiak et al. US 5,431,428.

Franklin et al. discloses a portable container having a container 22 including a generally vertical side wall 92 and an open top with a cover 116. See Figures 1-4 and 14, and column 5, lines 6-13. Two wheels, 96 and 96', are each attached to the container adjacent the side wall for supporting the container. See Figure 1. A telescoping handle 30 is attached to the side wall, and the side wall includes an integral through passage for the handle between guide rails 102 and 102'. See Figures 4 and 6, and column 5, lines 16-23. The wheels are mounted on each side of the passage. See Figure 1. The handle includes first and second telescoping members, wherein the first member 100 comprises a housing for the second member 60, 110, 110'. See Figure 1. The first member is slidably mounted in the through passage and the second member is

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slidably mounted in the first member. See Figure 6. The first member and the passage each include projection stop members, 112 and 54 respectively, that limit the telescopic movement of the first member. See Figures 4 and 6, column 5, lines 49-52. The second member includes a projecting stop member 46 for engaging the housing to limit extension of the second member from the housing. See Figures 4 and 7. Also, the passage and housing have a generally rectangular cross sectional profile. See Figures 4 and 6.

Franklin et al. does not disclose that the container is a tool container in the form of a tub, that the second member includes a manually releasable biased stop member, that the container is formed molded plastic, or that the container includes nesting trays. However, Tiramani et al. teaches that providing a container as a molded plastic tool container in the form of a tub was old and well known in the art at the time the invention was made. See column 1, lines 8-10, column 8, lines 57-58, column 9, lines 11-12, and column 12, lines 42-44. Also, providing nesting trays 12 was also old and well known at the time the invention was made. See Figure 31. Furthermore, Marchwiak et al. teaches that the practice of providing a second member 74 of a telescoping handle with a manually releasable biased stop member 86 for engaging a ledge 90 of a first member 80 was old and well known in the art at the time the invention was made. See Figures 13 and 13a, and column 3, lines 51-61, and column 5, lines 23-32.

From the teachings of Tiramani et al., forming the container of Franklin et al. as a molded plastic tool container in the form of a tub would have been obvious to one of ordinary skill in the art at the time the invention was made. This would allow a workman

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to easily store and transport his equipment. Also, this would utilize a manufacturing process (molding) that is familiar to manufacturing personnel and would produce a strong and lightweight structure. Providing the container of Franklin et al. with nesting trays would have been obvious to one of ordinary skill in the art at the time the invention was made so that items can be efficiently organized within the container.

From the teachings of Marchwiak et al., providing the second member of Franklin et al. with a manually releasable biased stop member would have been obvious to one of ordinary skill in the art at the time the invention was made. This would help to lock the handle in position.

Allowable Subject Matter

Claims 5-8 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

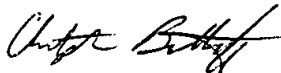
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Basile, Tsai US 5,460,393, Tisbo et al., Kazmark, Jr. et al., Berman et al., Hsieh, Fenton et al., Lee, Tsai US 5,927,451, Caruso, Be, Kizewski, Marchwiak et al., Kuo, Sadow, Tiramani et al. US 6,347,847, and Thompson disclose portable containers.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher Bottorff whose telephone number is (703) 308-2183. The examiner can normally be reached on Mon.-Fri. 7:30 a.m. - 4:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Johnson can be reached on (703) 308-0885. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-7687 for regular communications and (703) 305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.



Christopher Bottorff
April 19, 2003